IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CL 96-2440 AN

THE STATE OF FLORIDA, et al.,

Plaintiff,

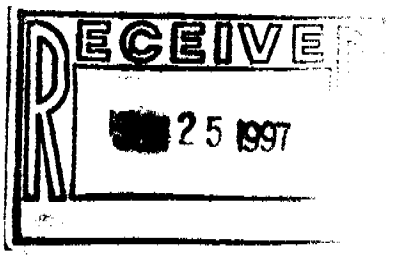
vs.

THE AMERICAN TOBACCO COMPANY,
et al.,

Defendant.
_____/

DEPOSITION OF ALLEN F. NASH
TAKEN AT THE INSTANCE OF THE DEFENDANT

Fort Lauderdale, Florida
June 19, 1997
9:36 - 12:50 p.m.



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I N D E X

WITNESS: ALLEN F. NASH

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EXHIBITS FOR IDENTIFICATION:

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Defendant's Composite Exhibit 1..... (Exhibit previously marked in Richard Boyd's deposition)	70	9
Defendant's Exhibit 2..... (Memorandum from Richard Boyd to all District Supervisors)	88	20
Defendant's Exhibit 3..... (Report)	91	7
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The Deposition of ALLEN F. NASH, was taken before me, DARLINE MARIE WEST, Registered Professional Reporter and Notary Public, State of Florida at Large, at 500 E. Broward Boulevard, 10th Floor, Fort Lauderdale, Florida, County of Palm Beach, State of Florida, beginning at the hour of 9:36 a.m. on Thursday, June 19, 1997, pursuant to the Notice filed herein, at the instance of the Defendant in the above-entitled cause pending before the above-named Court.

- - - -

THEREUPON,

ALLEN F. NASH,

being by me first duly sworn to testify the whole truth, as hereinafter certified, testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MS. FURNESS:

Q. Good morning, Captain Nash.

A. Good morning.

Q. My name is Amy Furness. I'm local counsel for R.J. Reynolds Tobacco Company. Could you state your full name for the record, please?

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A. Allen F. Nash.

Q. And could you please give us your address?

MR. LECLAIR: Business address, I assume?

BY MS. FURNESS:

Q. Please.

A. 499 Northwest 70th Avenue, Plantation, Florida, 33317, Suite 312.

Q. Captain, have you ever been deposed before?

A. Yes, I have.

Q. And have any of these depositions been related to tobacco?

A. No.

Q. And you understand that you have to answer all questions audibly?

A. Yes.

Q. When I ask the question, I ask only that you wait until I complete my question because the court reporter can't transcribe us both at one time.

A. Yes.

Q. Are you taking any medications this morning that may impair your ability to give

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testimony today?

A. No.

Q. Did you do anything to prepare for this deposition?

A. No. Other than knowing the address, visualizing where it was located.

Q. And have you reviewed any documents in preparation for this deposition?

A. No.

Q. Can you provide us, please, with your educational back?

A. I have an AA degree. I have a Bachelor's degree in political science and public administration. And I have a Master of Arts degree in management and supervision.

Q. Beginning with your AA degree, what college did you receive that?

A. It was named Florida Junior College at the time. Now it's something -- Jacksonville Community College or something like that.

Q. Is that in Jacksonville?

A. Yes.

Q. And what year did you receive that degree?

A. 1973.

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Q. And your Bachelor's degree was awarded from what college?

A. University of North Florida, Jacksonville, Florida, 1975.

Q. And your Master of Arts was awarded from what college?

A. Central Michigan University, 1980, Mt. Pleasant, Michigan, 1980.

Q. Could you tell me, are you involved in any professional associations?

A. Yes. I belong to Broward County Chiefs of Police Association. I belong to the State Chiefs Law Enforcement Association, which has just become affiliated with the International Chiefs of Police Association. I'm trying to think of others. That's about it that I can recall at this time.

Q. And beginning with your most recent job, could you please give us your title?

A. My title is district supervisor and sometimes district commander, depending on who you're talking to.

Q. And how long have you held that position?

A. For approximately three-and-a-half

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years.

Q. And working backwards, can we go through each position prior to district supervisor?

A. Okay. Prior to district supervisor, I was -- okay. District supervisor carries a rank of captain. My rank is captain. My titles are those other things. Prior to becoming a captain, I was a law enforcement sergeant.

Q. And for how long were you a law enforcement sergeant?

A. I was a sergeant from 1980 to 1993.

Q. And prior to 1980, what was your title?

A. My rank before sergeant was beverage officer two.

Q. What would have been the time of employment for beverage officer two?

A. 1975 to 1980.

Q. Were you a beverage officer two in Florida?

A. Yes. You're trying to match the education -- Central Michigan University has an off campus program.

Q. Okay. In Jacksonville?

A. Yes.

Q. Okay. And prior to beverage officer,

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two, what was your job title?

A. I was a beverage agent. Titles changed from time to time, beverage enforcement agent, things like that, beverage investigator, but it all meant the same thing.

Q. And what would have been the appropriate years of employment as a beverage agent?

A. From 1968 to 1975.

Q. Would that have been your first position with the force?

A. Yes.

Q. And let's start with the beverage agent. Could you describe your job duties?

A. Enforced the State of Florida's beverage and cigarette tax laws and regulate the private beverage and tobacco industry.

Q. And could you get into more detail and explain how you did that?

A. I would conduct investigations and make arrests of those persons found violating those laws, file administrative charges for those licensed under the beverage law.

Q. Now, when you say you would conduct investigations, was that for alcohol?

A. That's alcohol and tobacco.

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Q. Okay. And could you tell me what percentage of your investigations would have been directed to alcohol and what percentage would have been directed to tobacco?

A. I can say the majority percentage would have been alcohol. I can't say exactly what that percentage would be.

Q. Okay. And what type of violations would you conduct investigations regarding alcohol?

A. Sale of alcoholic beverages without a license. Sale of alcoholic beverages to underage persons. You name it in the beverage law, and I did it as a beverage agent.

Q. And the same question with respect to tobacco. What type of investigations would you have conducted?

A. Sales to persons under the legal age to purchase tobacco products. I think it was specifically cigarettes in those days.

Q. How did you conduct these investigations?

A. You would go to a location, usually on a complaint, and you would conduct a surveilance of the premises, usually from outside the premises, and try to determine underage persons buying,

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being sold to, and stop, question, investigate and, if they're in violation, take action.

Q. Would you stop, question, and investigate the potential underage purchaser, or would you stop, question, and investigate the seller?

A. You have to stop and investigate the underage -- potential underage persons first to determine whether they're underage or not, and then you would -- if they were, you went back into the premises and took action with the proprietor of the store or whatever it was.

Q. And what type of action would you take?

A. Well, you would issue misdemeanor citations, you could file administrative charges if they had a beverage license.

Q. And this would have been in the period 1968 to 1975; is that correct?

A. Yes.

Q. I'm sorry. Did you say that the majority of your investigations were directed to alcohol violations?

A. Yes.

Q. And if you could just qualify for me what percentage would have been directed to

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tobacco violations?

A. I do not know what percentage. I couldn't say a percentage. Like I say, I know -- I worked more alcohol violations than I would have cigarette violations.

Q. Would you stay 70 percent alcohol, 30 percent tobacco?

MR. LECLAIR: Object to the form of the question. Asked and answered.

BY MS. FURNESS:

Q. You may answer.

A. That sounds reasonable, but I couldn't say specifically those numbers.

Q. And then you were promoted to a beverage officer two; is that correct?

A. Right.

Q. Did your job duties change at any time?

A. Yes, they did.

Q. Could you tell me the difference between a beverage agent and a beverage officer?

A. Beverage officer two -- by that time, beverage officer changed, and the title changed to beverage officer two, and beverage officer two was a step up in that classification. Beverage officer two had supervisery responsibilities,

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basically a field supervisor or a supervisor. And when a sergeant or another higher ranking person wasn't around, beverage officer two would have been the supervisor. Other types of investigations that beverage officer twos work, you might say, were the more complex investigations dealing with tied-house cases, sometimes called tied-house evil cases in the State of Florida, dealing with the three-tier system in the alcohol industry. Antitrust cases somebody might call them. Those type investigations are normally more complex than the normal routine investigations.

Q. Could you explain in a little more detail what this tied-house investigation entails?

A. Okay. In the State of Florida -- Florida's a three-tier state in the alcoholic beverage industry. You have manufacturers, sometimes called suppliers, distributors sometimes called wholesalers, and retailers sometimes called vendors. In the State of Florida it's illegal for a manufacturer or a distributor to give anything of value to a retailer or to provide any kind of financial assistance.

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The connection between those two go way back in alcoholic beverage history. They used to call it tied houses when these houses were connected. The manufacturer might own the distributor and the retailer, and in Florida that's an evil. That's against the law. And we would fine manufacturers and distributors still trying to financially give assistance to retailers, and that is a violation.

Q. How is that spelled?

A. T I E D H O U S E. And in Florida it has evil on the end. Other states call it tied-house violations. In Florida, the title of the law is tied-house evil.

Q. Does that apply only to alcohol, or does it apply to tobacco?

A. It only applies to alcohol.

Q. As a beverage officer two, did any of your duties involve investigations of tobacco?

A. I would doubt it.

Q. And why is that?

A. Because of the -- it would have been the more complex investigation. Minors would have -- that's what we would classify the underage investigation, which would be going to the

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premises, conducting the surveillance, it either happened or it didn't happen. The tied-house evil investigation -- types of investigations would be more complex, involving more people, different locations, all kinds of things; whereas, the minor investigation did not require that kind of, you might say, expertise.

Q. The only investigations you conducted, then, as a beverage officer two were tied-house investigations?

A. That would be the majority of them. I would have investigated other types. But the majority would have been tied-house evil.

Q. You were promoted, then, in 1980 to law enforcement sergeant; is that correct?

A. Yes, that's correct.

Q. Could you tell me, did your job duties at that time change?

A. Yes, they did. They changed to the point where almost exclusively I supervised rather than investigated. Although I did conduct investigations, the majority of my work was supervisery in nature.

Q. Did you have a staff that you supervised?

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A. Yes.

Q. How many people were on your staff?

A. From as many as 14, 15 people to as few as maybe five.

Q. What type of investigations would your staff have conducted that you would have been supervisor?

A. Everything that our authority allowed us to supervise.

Q. Can you give me a couple of examples?

A. Everything in the beverage and cigarette tax laws for the State of Florida.

Q. Well, did you investigate --

A. Not investigate. My staff would have investigated at this point.

Q. Did your staff investigate the collection of taxes?

A. They would have conducted investigations that would have involved someone not paying taxes.

Q. Not paying taxes for alcoholic or beverage license; is that correct?

A. That, and/or excise taxes for alcoholic beverages.

Q. Can you describe in some detail what

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type of investigations would be conducted regarding taxes?

A. Okay. Any alcoholic beverage brought into the State of Florida is subject to the excise tax. That tax is usually collected at the level of the wholesaler distributor. When someone brings an alcoholic beverage into the State of Florida and doesn't come through a distributor, they're in violation of the state law, and they owe the tax on that alcohol beverage that they brought in without going through the proper channels. And we -- part of our job is to determine who's bringing it in, make a criminal arrest, and try to get back the excise taxes, collect the excise taxes.

Q. Is it the same investigation for tobacco tax violations?

A. No. I can't recall -- with the cigarette tax violations, we would receive notification from manufacturers or people out of state saying, I sent these alcohol -- these tobacco products through the mail to someone, and in accordance with the law, I'm reporting it to the State of Florida. We would go and knock on the person's door and say, we understand you got

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cigarettes from such and such, you need to pay the taxes. And the people would pay the taxes. With the alcohol, it was a little dirtier, a little grimier, trying to find out who, what, when, and where with people bringing it into the State of Florida.

Now, there were situations where we worked investigations where people were bringing in large quantities of cigarettes in violation of the -- well, excise tax laws, and we worked those. But they were not as many as the nice clean type where you knock on the door and say, we're here to collect the tax on those cigarettes you got through the mail. In other words, there is one where there's direct sale through the mail, and there's what we would call a smuggler, someone who purposely leaves the State of Florida with the intent to go outside the State of Florida, buys cigarettes, brings them back in and sells them without paying the state excise tax.

Q. And how would your investigation know absent notification of someone who had sent cigarettes? How would your office know there would be a violation?

A. You mean for the smuggling-type

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violation?

Q. That's correct.

A. Informant's information, anonymous tips, working other investigations, law enforcement agencies.

Q. Do you investigate every complaint you receive regarding tobacco tax violations?

A. Yes, we do.

Q. And could you tell me in the years that you've been working the number of arrests that you've made in regard to tobacco tax violations?

A. I couldn't tell you offhand.

Q. Over 100?

A. I wouldn't think so.

Q. In 1993 you were promoted to captain; is that correct?

A. Yes.

Q. Once again, could you tell me, did your job duties change at all with the promotion?

A. Yes, they did. They changed in that I came to a different location. It changed in that I'm the person in charge of the entire office and represent the division in that area of the State. And I'm responsible for everything, I guess.

Q. How large is your staff now?

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A. Twenty-four people in the licensing and enforcement area. There's another 24 -- 20 people in auditing, but I don't directly supervise them. It's, like, I coordinate with the auditors. I don't supervise the auditors.

Q. All right. I'd just like to return to each of your positions for one minute and, if I could, get the name of your supervisor when you were a beverage agent.

A. As a beverage agent, I would have had a supervisor named Perry Kirkland, Curtis Routzong.

Q. Could you spell that?

A. R O U T Z O N G. We're talking immediate supervisors or -- as a beverage officer you got sergeants and you got district supervisors.

Q. As many as you can remember, please.

A. You mean the district supervisors, also. Okay. Edward Ashley is a district supervisor; B. K. Findley is a district supervisor; Joe Oganowski is a district supervisor; and Richard Complano as a district supervisor.

Q. These are all your district supervisors as a beverage agent; is that correct?

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A. No. As a beverage -- oh, as a beverage agent, they were all district supervisors. Except the first two that I named, they were sergeants. They were my immediate supervisors but not district supervisors. The others I named were district supervisors while I was beverage agent. The last one I named, Richard Complano, I got promoted, while he was my district supervisor, to sergeant. He was an district supervisor as an agent and as a sergeant.

Q. When you became a beverage officer, who was your supervisor?

A. When I became --

Q. A beverage officer two, excuse me.

A. When I became a beverage officer two, my sergeant's name was Perry Kirkland, in enforcement. The licensing sergeant in the office was Curtis Routzong. No, no, eliminate Curtis Routzong. He had retired. It was Perry Kirkland. And the district supervisor was Complano, Richard Complano.

Q. Who was the sergeant and district supervisor when you were promoted to law enforcement sergeant?

A. Complano was the district supervisor,

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and I became sergeant.

Q. Right.

A. Okay.

Q. As captain, did you have a district supervisor, or did you at that time become district supervisor as well?

A. I became district supervisor.

Q. In your position as captain, did you set any priorities for your office?

A. District supervisors don't set priorities, okay. Priorities are set by the director.

Q. Do you know what priorities are currently set by the director?

A. Okay. The way the director sets priorities is through the -- what we call strategic goals, and the strategic goals emphasize underage -- you might say the number one is underage alcohol and tobacco sales to underage persons, drug violations, nuisance violations, things of that nature. What it is, you might say, is a way to prioritize your time. So you put manpower and effort into these things. These are the things we want to be doing. That's basically what strategic goals are for, in my estimation.

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Q. Are the strategic goals formalized in a document?

A. I'm not sure. When I was working with them, it was like we were giving input to the director, and you get some kind of notification that these are -- what came out of it. But I'm sure somewhere there's something that says strategic goals for the Division of Alcoholic Beverages are, but I can't say where it is and what it is. But I know what our strategic goals are.

Q. Have you ever seen this document?

A. I have never seen a completed version of it. I've seen, like, working drafts. Like I've been in workshops where we worked on strategic goals for the organization. But to have one completely finished, saying this is it, go with it, I can't say that I have seen such a thing.

Q. Can you tell me about these workshops that you went to?

A. Managers' meetings -- various managers' meetings that I attended there would be workshops on strategic goals.

Q. During what time period would these managers' meetings be held?

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A. Well, I would have only been privy to go to them since 1993, okay. That's when they call you a manager, district supervisor. That would have to be from 1993 to now.

Q. They have been held before 1993, but that would have been the first year that you attended; is that correct?

A. No. I would not have been to one before 1993. In 1993 is when I attended some managers' meetings, and we would have strategic goal workshops.

Q. Where are these managers' meetings held?

A. Different places. They try to centrally locate them for all the managers, like the central part of the state, Orlando, places like that.

Q. Could you describe in some detail the type of seminars or meetings that are held at these managers' workshops?

A. I'm not sure I understand what you --

Q. Well, if you were to give me, for example, an agenda of a typical managers' meeting.

A. A typical managers' meeting would probably start with being addressed by the

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director, the entire body, and there would be different topics that he would discuss. There might be a breakout between enforcement and auditing and other topics or categories or workshops in the breakout session.

Q. Which breakout session would you attend?

A. I would attend the enforcement breakout session.

Q. What topics would be discussed in that?

A. It might be anything the director wanted to talk about or something that a manager had asked to give -- to talk about, and it would be -- that's what we would talk about.

Q. Did you attend this managers' meeting last year?

A. I did attend some managers' meetings last year.

Q. Could you tell me specifically at those managers' meetings what law enforcement topics were discussed?

A. No, I couldn't. I could say there would be several. They usually last about a day-and-a-half. I wouldn't be able to remember.

Q. Were sales to minors of tobacco products and alcohol discussed at enforcement meeting?

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A. I can't say for sure.

Q. Do you remember anything about these strategic goals that might have been discussed at these meetings?

A. Strategic goal setting workshop, I do know that underage alcohol and tobacco sales to minors was a big item and was number one, you might say, ranking of most important things as a strategic goal.

Q. And that would be underage sales of both alcohol and tobacco?

A. Yes.

Q. What types of topics were discussed regarding underage sales of alcohol?

A. I wouldn't remember specific topics. Just the general heading of underage sales of alcohol and tobacco.

Q. Do you remember any topics regarding underage sales of tobacco?

A. Yes. I remember that topic being discussed, but any specifics I wouldn't remember.

Q. Did you discuss any investigation strategies?

A. Investigate strategies? I'm sure we would have. But I don't remember right now.

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Q. In any of your positions, have you ever given training to retailers regarding carding of minors?

A. Yes, I have.

Q. Could you describe that for me, please?

A. As a beverage officer and maybe even as a beverage officer two, I did, you might say, instructional teaching, whatever, for retailers and for law enforcement recruiters at different academies, police academies. Part of the duties of a beverage agent was to -- if upon a request from a licensee to come out and teach their employees the dos and don'ts of the beverage law and what they could or couldn't or should or shouldn't do as people who sell alcoholic beverages and tobacco to the public.

Q. And specifically what types of things should and shouldn't a retailer do?

A. Oh, we were -- we would tell them what the laws say on what you needed to check to feel comfortable that a person is of the right age to purchase alcoholic beverages or tobacco products and things like that.

Q. How often did you give these training sessions?

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A. Whenever somebody would ask and it would be assigned to me.

Q. Are these training sessions to retailers still conducted?

A. Not to the extent they were then. There are still people who request it, but today there is an industry that actively goes out and solicits the business of teaching retailers the things that we used to teach for free.

Q. When we were discussing the workshops, you had mentioned that you would attend the enforcement and not the auditing breakout; is that correct?

A. Okay. The managers' meeting itself would have breakouts. And when you separate them, I would go with enforcement. If that's what you're saying, yes, you understand correctly.

Q. Okay. Where would licensing fall, under auditing or enforcement?

A. Good question. The licensing function with the division of alcoholic beverages and tobacco, the personnel are supervised by enforcement people. In other words, I am directly responsible for supervising my licensing supervisor, and she supervises the licensing

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clerks. Our understanding is that there is a bureau of auditing and licensing in Tallahassee that encompasses my licensing supervisor and her licensing clerks. But our chain of command is licensing clerks to licensing supervisor, to me, to on up the line, okay. But I just wanted to make clear that there is a bureau of auditing and licensing that exists in Tallahassee. But it has nothing to do with the chain of command of the people working in my office and doing licensing work.

Q. What is the name of your licensing supervisor?

A. Mickey Edmonds.

Q. And Ms. Edmonds has several licensing clerks?

A. Two.

Q. Can I get their names, please?

A. Patty Cohen, P A T T I, C O H E n, and Ann, A N N, Turner, T U R N E R.

Q. Do you know how an application for a license is made for either alcohol or tobacco?

A. Yes.

Q. Could you describe that for me, please?

A. The applicant comes -- well, makes an

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appointment to come to our office. They come to our office, they pick up the paperwork. They are complete the paperwork. They bring it back to our office. Our licensing clerks review it, determine that it is or is not a completed application. At the point that they determine that it is a completed application. They are eligible for a temporary license for $100. And while the temporary license is in effect or until we give them a permanent license, we conduct a license investigation to determine whether are not -- it's basically a background investigation to determine whether or not they qualify to hold a permanent license.

Q. The process you described, is that identical for both alcohol and tobacco licenses?

A. No. With tobacco licenses, they make application -- the tobacco license is called a permit. It's different from a license. They make application. Information is verified. And upon paying a fee -- I'm not sure what it is -- the license is issued.

Q. So can you explain to me the difference between the tobacco permit and an alcohol license as far as the applicant?

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A. Okay. Under law, an applicant for an alcoholic beverage license has to be fingerprinted. It has requirements that aren't necessarily so with tobacco permits. Fingerprinting, FBI background check are required for alcoholic beverage licenses, and I don't think they are required for tobacco permit.

Q. Do you know why there is that difference?

A. Nothing other than state law.

Q. Are there any other differences beyond the fingerprinting and the FBI background check?

A. I can't think of any.

Q. What are the fees for each license?

A. Each --

Q. The fee for an alcoholic license?

A. There are numerous types of alcoholic beverage licenses, and I wouldn't sit here and try to pretend I know the different fees. I know the transfer fee is, $100 and sometimes that changes. If it's a 4-COP quarter license, the transfer fee may be 25 percent of the gross of the average of the last five years income from the last license holder. So there are formulas in effect. There are different kinds of licenses that have

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different fee schedules.

Q. Would you know what the fee is for a retailer license of alcohol?

A. Those are the several kinds that I'm telling you about. They depend on population of certain counties that the licenses are issued in, different kinds of licenses. I wouldn't sit here and try to tell you that I know those numbers.

Q. Would your answer be the same for tobacco permits for retailers?

A. I don't know how much it is for a tobacco retailer permit.

Q. Do you know the total number of licenses for retailers of alcohol?

A. Where?

Q. In your jurisdiction.

A. No.

Q. Would you know the total number of licenses for tobacco products in your jurisdiction?

A. No.

Q. What is the purpose of the State licensing retailers for tobacco and alcohol?

A. I would prefer -- any answer I would give you would be a guess.

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Q. Well, I don't want to you guess.

A. Okay.

Q. Can you tell me some of the types of investigations that Mickey Edmonds would have conducted?

A. Mickey Edmonds, you might say, would not conduct an investigation per se. Mickey Edmonds might do some things, some individual checks, here, there, and another place that would contribute to an investigation. But Mickey Edmonds wouldn't do investigations.

Q. Could you explain to me Mickey Edmonds' job duties?

A. Mickey Edmonds supervises the licensing section of the Broward County Division of Alcoholic Beverages and Tobacco. Investigations are assigned to enforcements agents. When she has an investigation that she needs conducted, she would, let's say, give it to an enforcement agent, and an enforcement sergeant would assign to it a beverage agent.

Q. What types of investigations would be assigned?

A. They would basically be background-type investigations or they would be investigations to

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determine whether or not a requirement for the -- that type of license is being met at -- by this applicant.

Q. Would you be able to tell me how many investigations have been assigned regarding alcohol and how many investigations have been assigned regarding tobacco licenses?

A. No, I would not be able to tell you a number like that.

Q. Does Mickey Edmonds keep statistics on the types of investigations that are assigned?

A. Mickey Edmonds would keep whatever statistics the agency requires. I don't know what kind of statistics you're asking about.

Q. Well, does she report to you annually and say, for example, you know, we've had "X" amount of investigations this year on alcohol and "X" amount of investigations on tobacco?

A. No, she wouldn't.

Q. And the licensing clerks also would not know?

A. No. That's not to say that the information wouldn't be captured somewhere on a computer in Tallahassee or wherever, but no such numbers are reported to me.

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Q. Let's talk a little bit about suspension of license.

A. Okay.

Q. Can you tell me, are there guidelines for suspension or revocation of licenses?

A. Yes, there are.

Q. Can you explain those for me?

A. There is a penalty guideline section in the latest edition of the Florida Alcoholic beverage and cigarette tax laws publication that the division publishes. And they -- and it's called "Penalty Guidelines."

Q. Can you give some of examples of the violations?

A. They would be -- I think it tries to capture the majority if not all of the violations that can be committed in violation of the cigarette and alcohol tax laws for the State of Florida.

A. So if you were to get a volume of Florida Statutes 516 through 568 or whatever and you name a violation, the guideline would try to say if someone violates this guideline, first offense, this would be the penalty, second offense, third offense, like that.

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Q. If we were to look specifically for violations of sales to minors, could you tell me what the violations would be?

MR. LECLAIR: Of tobacco?

BY MS. FURNESS:

Q. Or alcohol.

A. It should tell you, yes.

Q. But do you know?

A. I know that the sale of alcoholic beverages to underage persons falls under the pattern of activity violation, which means that a licensed premises without other circumstances involved would have one, two, three instances of us catching them before an administrative charge would be filed. Upon filing of that administrative charge, they would be subject to a $1,000 civil penalty and suspension of the beverage license. I can't remember for how many days.

Q. And then is that the same for the sale of tobacco products to underage persons?

A. I don't recall what the guideline is for tobacco, underage sales of tobacco products to an underage person. But I do know it falls within the same -- has the same criteria for us filing a

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case against a tobacco license for the pattern of activity for the three violations.

Q. Who in your office would know what violations result, based on the sale of tobacco to underage persons?

A. I don't understand that question.

Q. I had asked you what the violation would be for the sale of tobacco products to minors, correct?

A. Okay.

Q. And you said you didn't know what the violations were, correct?

A. Yes.

Q. And so I'm trying to find out who at your office would know what the violations would be.

A. I'm thinking you should be able to pick up the book and it would show anybody reading the book what it is. I'm saying I don't recall what it is at this time.

Q. You supervised approximately how many on your staff?

A. Twenty-four or 23, not counting myself.

Q. Could you tell me, of the 24 employees, what specific departments or how your staff is

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broken up?

A. Okay. I have myself, district supervisor. I have two law enforcement sergeants who supervise a total of 13 special agent positions and two cigarette investigator positions. Then I have one staff assistant, one administrative secretary, one senior clerk. That's enforcement. All of that is enforcement. In licensing, I have a licensing supervisor and two professional regulation specialists who are the licensing clerks.

Q. What are the names of your two cigarette investigators?

A. One position is filled. One is vacant. The one that's filled is Evadne Maxwell. E V A N E, next word, M A X W E L L. Well, E V A D E -- E V A D N E.

Q. Your 13 special agents, did they investigate anything regarding cigarettes?

A. Yes.

Q. So why is there one particular cigarette investigator and 13 special agents?

A. Okay. The agency has a, you might say, expectation for every district to have every cigarette machine in its area inspected annually.

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And that's one of the functions of a specialist cigarette investigator which would leave the agents to work the criminal violations, administrative violations, okay.

Q. So if you were described the job duties of the cigarette investigator, he would be responsible for --

A. She.

Q. I'm sorry.

She would be responsible for only verifying that the district's cigarette machines have been inspected annually?

A. Not only, no. That would be a major function of her position. But other functions of her position would be inspecting licensed premises -- or inspecting premises that sell cigarettes, whether they have vending machines or not, and reporting those violations found to a supervisor who might assign an agent to work administrative or criminal violation. The cigarette investigator does not have criminal arrest powers.

Q. What type of violations would she report?

A. She would report any violation of a cigarette machine not being in line of sight,

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cigarettes not having a permit, or a location of a retail vendor selling cigarettes without a permit, things like that.

Q. Would she report any violations on sales to underage persons?

A. Oh definitely, yes, she would.

Q. Is her position new?

A. Well, it depends on what you call new. She was -- the first instance of that position I'm familiar with was from Jacksonville about 1991 or '92. I can't say for sure which one of those years. But in that area, the cigarette investigative position became a reality.

Q. Why is there one position vacant?

A. Because it's not a full position. It's like one-fourth of a position. We at one time had two people. One of the two cigarette investigators -- one transferred to Palm Beach and left a vacant position. And while that position was vacant, three-quarters of it was taken for some other use somewhere else, is my understanding.

Q. Are you looking to fill that position currently?

A. I would love to fill that position, but

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I don't reasonably expect to find somebody that would accept one quarter pay. You know, it's not realistic.

Q. Can you describe the duties of the 13 special agents?

A. They enforce all the laws, the rules of the State of Florida concerning alcohol and cigarette tax laws and regulate that industry through laws and rules. And they are all sworn officers, law enforcement officers, as are the sergeants and myself.

Q. When you become a sworn law enforcement officer, do you have any special training in sales to minors for either alcohol or tobacco?

A. Yes. We send our people to special beverage and cigarette school in Tallahassee.

Q. Is there a formal name for that school?

A. It's called Division of Alcoholic Beverages and Tobacco Basic Investigation School or something like that.

Q. How long is the course?

A. Depends. It might be three weeks, might be six weeks, but that depends on what year it is.

Q. Why is that?

A. I have no idea.

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Q. Three to six weeks are dedicated only to issues related to underage sales to minors or to many other things?

A. No. To issues of the Division of Beverage specific jurisdiction law that we enforce and regulate.

Q. Did you attend this course?

A. Yes, I did.

Q. And when did you attend this course?

A. I would have to approximate about 1968, '69.

Q. And when you attended the course, if you remember, how much time was dedicated to instructions given on underage sales of either tobacco or alcohol?

A. I would say maybe a week at the most.

Q. And in 1968, was the course three to six weeks?

A. I'm thinking it might have been maybe a month. I'm not sure.

Q. What types of things were taught in this course during the week in special sales to minors?

A. How to conduct a minor investigation, that kind of thing.

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Q. How do you conduct a minors investigation?

A. Well, back then you would either get a complaint from whatever various source or receive information that a specific location was selling to minors. If it was a -- what we call a package, a take-out store, you would go to that location and set up surveillance and sit and wait and observe for a young-looking person to go into the establishment and with your binoculars try to see whether they're purchasing alcoholic beverages or cigarette products. And if they do and they look young, as they come out, you stop them and ask for identification, and if they can prove or show you that they're of whatever the age was, then you go back and take up position again some, you know -- wherever you were before. If they were underage, you would conduct your investigation, take them into custody, and go back in and deal with the -- whoever sold it to them inside.

Now, with cigarettes, you couldn't take them into custody. There was no law that prohibited the underage person from being in possession of cigarettes. So it was a very delicate investigation on that part. And if they

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were underage, it was almost as if they would volunteer to go back inside and confront, you might say, the person who sold to them. But in 1968, '69, that's how we conducted underage investigation.

Q. How has your investigation changed since 1968, '69?

A. The biggest change since then is that we now can use our own underage people to go into the premises, you might say, a more proactive way of investigation. We don't have to sit outside for hours. You basically get a young person, young-appearing person. You make sure they don't have any false I.D. You instill in them they have to tell the truth when they go into the premises. And you send them in to buy cigarettes or alcoholic beverages; and if they do, then you make the arrest and take it from there.

Q. Who is arrested, the minor or the retailer?

A. Okay. We're sending the minor in. The minor is working under our instructions. So that minor is not arrested. The person who is arrested, issued a misdeemor citation, is the person who actually sold to the minor.

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Q. Is there a difference if the person who sold to the minor actually owns the store as opposed to just being an employee, or is it the same penalty?

A. The only difference in those two -- there's no difference with the arrest. There is a difference if the person doing the selling is an employee. We don't file administrative charges. We have to have the pattern of the three buys by an underage person before we can file administrative charges against the license. If it's a licensee doing that -- that did the selling, we file administrative charges on that one buy because that person is the responsible person.

Q. Are you familiar with the Synar Amendment?

A. I've heard the name, yes.

Q. What do you understand it to mean?

A. I understand it to be a federal regulation that somehow helps different states if those states follow certain guidelines with reference to alcoholic beverage or tobacco regulation. I think it's tobacco regulation as it relates to underage people.

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Q. Do you know what those guidelines are?

A. No.

Q. Do you know when the amendment was passed?

A. No.

Q. Do you ensure compliance with the amendment?

A. The context that I heard of the Synar Amendment in was related to how we do what we do or maybe how we report what we do or things like that. I'm not --

Q. When you say how we report what we do, what does that mean?

A. The information that is captured and recorded, how it's captured and recorded, how it's made available through our computer system, and things like that.

Q. Who at your office would capture this information?

A. No one person would capture the information. The computer system would capture the information. And at this time, my understanding, you might say the administrator of all things going into the computer is handled by a Captain Russ Smith for the State. He works now

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out of Tallahassee, but he still has an office in my office. He was my predecessor. I succeeded him in the district supervisor position in Plantation, Fort Lauderdale. And he became the computer person for the State, for the Division. And he, you might say, compiles statistics for the State that come off the computer. If somebody, let's say, from wherever wanted a statistic, they would contact the director, and the director would say, Captain Smith, you know, give me these figures. Captain Smith would get those figures.

Q. Does anyone in your office have primary responsibility for the statistics?

A. No.

Q. So if the director asked you, Captain Nash, to get those statistics, who would you go to to get them?

A. We would give them what we could locally, say, the computer spits out whatever figures that are there. But we don't usually get requests like that. The requests, my understanding, usually are for the State of Florida and things like that, and Russ Smith compiles them. It would be whatever is on our computer, whatever totals are there.

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Q. Would you know what totals are there?

A. For what? I mean, what are we -- I mean, everything we do, we computerize it.

Q. Well, staying right now in the arena of underage sales of tobacco products, would you have some way to track the violations, the arrests, the administrative charges?

A. We would -- yes. We would -- you know, any time anyone makes an arrest, they come back to the office and they enter their report in the computer. A record of that would be there. And adding up those, I'm sure we could find somebody to print out a report saying how many people we arrest in the month of ta-da, ta-da, ta-da or whatever. I'm sure we can do that.

Q. There are no formal policies in place in your office to ensure compliance with this amendment?

A. I'm not sure what your question is. I told you I didn't know what the amendment was -- specifics of the amendment. And then you ask me is there a policy in place to ensure compliance with the amendment.

What aspects of the amendment are you referring to?

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Q. The number of surveillances that you would conduct, the number of properties that you may visit.

A. Every investigation is documented. Every investigation that we do, whether it's cigarettes, anything else, it's documented, okay. Every inspection that our cigarette inspector in place that is inspected is documented. I don't know.

What is it that you're asking?

Q. Do you know, under the amendment, if there is a particular percentage of retailers that you are charged with --

MR. LECLAIR: Let me just interpose an objection. The witness has already indicated he doesn't have a familiarity with the amendment. So asking him questions relating to his compliance with it, I think, is going beyond what he's already indicated is his ability to respond.

If you're able to answer, Captain, feel free to do so.

THE WITNESS: It sounds like you're talking about something else, okay. You're talking about percentages of places checked.

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I have no knowledge that this comes from the Synar Amendment. Part of our strategic goals say that every office will every quarter check -- what is it, 5 percent of their licenses, tobacco and alcoholic beverages, so that at the end of the year, 20 percent of all licenses will be checked.

Is that what you're --

BY MS. FURNESS:

Q. That's correct.

A. Yes. We do that. We -- we follow that guideline. But we understand it as being part of your strategic goals, to inspect 20 percent of the tobacco and alcoholic locations in our area. Not inspect. I should say test, sending underage persons in.

Q. Now, who in your office would ensure compliance with your strategic goals?

A. I would.

Q. Have you complied every year with your strategic goals?

A. Yes, I have.

Q. And can you tell me what are the primary means of compliance?

A. Primary means of sending underage

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persons into licensed premises that sell tobacco products to determine whether they are complying with the law or not complying with the law. If they sell, they are not complying. If they don't sell, they are in compliance.

Q. Would your special agents be charged with determining whether or not there are sales to underage minors or would that be part of your cigarette investigator's duties?

A. The agents would determine -- they're the ones who would send the underage person in.

Q. And do all 13 of your special agents work on this assignment?

A. Yes. Unless they have some other special assignment that they might be assigned to.

Q. If you could tell me what percentage of the special agent's work would be dedicated to this as opposed to other assignments?

A. This is it. You do this. Everything else is -- takes a back seat to this. This is our strategic goal. This is something we have to do. I can't give you a percentage. I can say the majority of their time, effort, planning goes into ensuring that they perform the percentage that's

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allocated to them.

Q. How long has this been in effect, this strategic goal?

A. An estimation would be sometime between '93, '94. I know that we started doing what was called surveys in 19 -- early 1994.

Q. What is a survey?

A. That's where you might say the director says, okay, I want "X" number of percentage of offices tested with underage persons, and the original terminology we used for that was a survey.

Q. How do you get a list of locations to survey?

A. The number of alcoholic beverage license or tobacco permits you have in your office.

Q. And you surveyed both alcohol license and tobacco permits?

A. Yes. You have to, if you're working -- it's a waste of time to go to a location to do a tobacco test and they don't sell cigarettes or don't sell tobacco. So you need to know who does what and where, and that's how you -- and that's how you plan out -- depends on how people you have, how many locations you have, you know. You

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have to divide it up so an equal amount goes to an equal amount of agents that you have available. So you draw from the -- you might say, listing of alcoholic licenses and tobacco permits.

Q. Do you target only tobacco permits when you conduct these investigations?

A. No. Sometimes we do. Sometimes we have -- to satisfy the strategic goal recently, say, within the past year or so, the idea of random sampling has come about. Random sampling has to be computerized, comes from Tallahassee. And the random sampling list would come out -- last time we set one up came from Tallahassee, a random sampling of places in our area. Prior to that, it was us doing the random sampling, you know, manually from a list of locations in our office, in our district. And that may have something do with the Synar Amendment, random sampling, computer sampling. I don't know.

Q. You said these surveys began in 1993, 1994; is that correct?

A. The types of surveys that we are speaking of, yes.

Q. What was done prior to 1993?

A. Prior to 1993? The strategic goals

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weren't in place. You might have priorities that you would understand that the agency wanted an emphasis put on. But any surveys would be specific surveys out of the blue, the director saying for the next two months, three months, I want every whatever checked. And that's what would be done. Otherwise it would be that understood priority that would be the main thing that you would be doing.

Q. Earlier you had said that the three priorities would be, one, underage sales of alcohol and tobacco; two, drug violations; and three which you characterized as nuisances; is that correct?

A. Yeah.

Q. That's the current strategical priorities; is that correct?

A. The ones that you emphasize are the ones that are number one. Okay. Number two, everybody knows drugs. Number three, I wouldn't know the exact layout of them, but I know those are the three most prominent ones, knowing that the minors is number one, okay. Below that, nuisance might be two, the drugs might be three, but they're there in the top numbers.

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Q. And these strategic goals and priorities are for the current year or have they always been in that ranking?

A. No. For, let's say, the past four years my recollection are that the minors' investigations have been number one. Dugs, number two. But nuisance necessarily not being three or whatever, might be five or whatever down there. But as far back in modern times that I can remember, sales to minors and drugs have been one and two, going way back.

Q. Can you tell me what enforcement activity is undertaken by your office to reduce underage sales of tobacco?

A. To reduce underage sales of tobacco. Well, we think our investigations using underage persons reduce the sale of tobacco products to underage persons. It's the idea that you convey to the retailer that any kid that walks in the store could be working for the State of Florida. And that, I think, is a deterrent.

Q. In the enforcement of the tobacco laws, is the seller's conduct or minor's conduct at issue?

A. Could you repeat that?

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(A portion of the record was read by the reporter.)

THE WITNESS: Are we talking about alcoholic beverages or tobacco?

BY MS. FURNESS:

Q. Tobacco.

A. Conduct? I'm not sure I understand "conduct at issue."

Q. The focus of the investigation, is it directed more towards preventing the minors from purchasing or preventing the sellers from selling, or both, if it is?

A. I would say our emphasis is trying -- is to stop the sale to underage persons. Now, if they don't sell them to the kids, then we solved the other side of the coin, the kids buying them.

Q. What is the applicable age for a minor?

A. The applicable age for a minor to do what?

Q. To purchase tobacco products.

A. They must be 18.

Q. Is that the same for alcohol?

A. No. They have to be 21 for alcohol.

Q. Do you know if it's always been 18 years of age as a minority for purchasing tobacco

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products?

A. As far as back as I can recall. And I'm an old-timer.

Q. In discussing your priorities, could you tell me how much of the department's resources are devoted to enforcement of underage sales of tobacco products?

A. I would have no idea of a breakdown on resources. I know that my full staff, that's what they do. That's their job. I don't know exactly what you mean.

Q. Is there any way to qualify either the number of hours spent or the days per week spent by a special agent investigating underage sales to minors of tobacco products versus underage sales to minors of alcohol?

A. I'm sure that information is available. But I'm sure I have never tried to get it extracted from any computer records.

Q. Regarding the underage volunteers, how do you select your volunteers?

A. You get real lucky. All volunteers come from a number of areas. We get Boy Scout Explorers. We get Girl Scouts. We have religious groups, churches that have organizations that will

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allow the children to help us. We have school groups, schools that have programs. We get volunteers from SADD, MADD, and all of those organizations that deal with problem drinking situations, alcoholic beverage use. We get children from organizations representing the Heart Association, Lung Association, et cetera, anywhere, everywhere.

Q. Do the volunteers go through a training course before they are used?

A. You might call it a training course. We call it indoctrination, where the agent sits down with the underage child and lets them know what all is involved in becoming a volunteer. We also talk to the parents. Parental consent is necessary, signed parental consent. We got to do the form. There's a selection process. Everybody can't help us. Some kids are too all. Some kids look too old. Our thing is not to try to fool the licensee. If anything, we want our underage kid to look younger than they are. The young ladies are not allowed to wear low-cut dresses, makeup. Young men are not allowed to wear any facial hair, things like that. We let them know what's involved. They can't use -- if they have any I.D.

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at all, it must be real I.D., like a Florida identification card, something like that. If they don't have any ID, they just say, I don't have any I.D. If they're asked how old they are, they must state their real age, real date of birth.

Q. Do the volunteers have to commit for a certain period of time?

A. No. We might document a kid going through all of the processes, training, et cetera, and photograph, and they may work one night or one day and not volunteer again. Then, again, there are people who've been volunteering for months. It depends.

Q. When they volunteer, they are accompanied by a police officer and then travel to a retailer?

A. They're -- okay. First of all, every time they work, they are photographed that day. You have to have a photograph showing that, you know, they didn't grow a beard last night. They are in the company of beverage agents. We like to have two beverage agents, and sometimes we even have three, depending on the area that we're going into. Safety is of great concern with our organization.

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They go to the location. The underage person is given an amount of money. We determine if they don't have any I.D. But with the I.D. they're supposed to have, they go into the license premises. We try, if possible, to have one of the agents go into the premises, be in the premises along with the underage person either before the kid goes in and he goes in and is shopping or after the kid goes, he goes in and shops, having the agent near enough to see, to corroborate what the underage sees, hears, and does, and then the sale is made, if a sale is made. The underage person leaves the premises, goes to a waiting beverage officer outside. A second beverage officer comes into the store, two beverage officers confront the seller, and advised them they just sold to an underage person who was helping us. And while all this is happening, the third beverage agent is in the vehicle with the kid and the evidence. And that's written up. A misdemeanor citation is issued.

At that time a notice can be written to the licensee saying, we caught your employee this night. But in most cases they come back to the office and mail that particular notice to, like,

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corporate headquarters or some responsible person. If you give it to the person who's having the problem that night, it may never get to the licensee. So that's how it's done.

If it's one, two, or the third violation by an employee of the premises, that is documented. If it's the third violation, administration charges are filed against the license. If on that one occasion it is the licensee, him or herself, then the administrative charges are filed, and that particular day or not, they are notified in writing that we intend to file adminstrative charges against your license for this violation.

That's basically an overview of it. There might be some other little fine detail that I left out. But that's basically it.

Q. Going through the fine details, when the volunteer goes into the retailer's premises, before they enter, are they told to purchase tobacco this time, purchase tobacco and alcohol?

A. Yes, they are.

Q. And who makes that determination?

A. The agent that is in charge of that particular investigation.

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Q. And what would make the difference in instructions to the volunteer whether they're to purchase just alcohol or purchase just cigarettes or purchase a combination?

A. Okay. Usually it's very rare that you find one person who can buy tobacco products, cigarettes, and alcoholic beverage products. We usually use younger people to do the tobacco test. They're 14, 15, 16-year-olds. But for the alcoholic beverage purchases, they may be 16, 17, 18-year-olds. You're going up the higher end. You might find a 16-year-old that might -- could buy alcoholic beverages and tobacco, but I don't think it's that common. So when they go out with a certain kid, they're going for certain things. They're going for the cigarette purchases or they're going for the alcoholic beverage purchase.

Q. And would you be able to quantify, in any detail, the number of volunteers that would go out only for tobacco purchases versus the number of volunteers going out for alcoholic purchases?

A. I don't know the numbers. But I'm sure everything we do is captured somewhere.

Do you follow what I'm saying?

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Q. If I were to try and get those numbers, who would be the contact at your office?

A. I would.

Q. Okay.

A. I would say to -- based on your specific request, I would say, where would we get this? And somebody would run a report and say, is this what you're looking for, Captain? I say, I don't know. What are these figures here? Yeah, that represents this, that, and the other. And if it's what you're looking for, that would be what we would give you.

MR. LECLAIR: Just so we're clear, when you asked the question, you said with respect to your office as opposed to your department. And I think the answers are different, depending on that usage of word.

BY MS. FURNESS:

Q. Excuse me. Could you clarify for me exactly what numbers you would be able to provide?

A. I would be able to provide whatever numbers are captured on the reports that we do based on investigations that we conduct and the numbers of reports that we do. Okay.

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Q. For how many years prior to 1997 would you be able to generate reports?

A. I would be able to generate reports -- should be able to generate going back to 1993, when I got here. Now, things were captured in a different format for 1992, and I'm sure they were available somewhere, but I wouldn't continue to speak for anything before 1993.

MS. FURNESS: Steven, I'm not sure if we have this specific data. If I check my office and you check yours, would it be a problem for me to get these?

MR. LECLAIR: I honestly don't know. You need to check with the folks in Tallahassee, the lead counsel in this, but I don't imagine there would be any problem.

BY MS. FURNESS:

Q. Also, going back to the fine details, you were using the term "beverage officers," and just so I'm clear, is that the same as a special agent?

A. Yes, yes.

Q. Okay. I'd like to talk a little bit more about the citations and the administrative charges. Would you know, for any given year, the

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specific number of citations that are issued for sales to minors of tobacco products?

A. For my office?

Q. Yes.

A. I would think that those numbers would have been captured, but I couldn't tell you those numbers. I mean, I can't sit here today and tell you those numbers. But I feel certain they're captured in our computer system.

Q. Would you consider this volunteer program -- if it's inappropriate, I would refer to it as a sting operation. Would that be correct?

A. I don't call it that. You can call it that. But I don't call it that.

Q. What term would you like to use?

A. I call it buys by an underage person or buys by a minor.

Q. For the buys by minors of tobacco products, would you know the number of arrests that have been made?

A. That would be captured somewhere in our records, yes.

Q. But, again, you wouldn't know today?

A. I wouldn't.

Q. Are you familiar with the Prevention of

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Access by Children to Tobacco Products Act?

A. No.

Q. Would you know how many prosecutions there have been for the sale of tobaccos to minors in your district?

A. That information would be captured somewhere, but I wouldn't know it. But not related to whatever that organization or whatever.

Q. The act.

A. The act that you mentioned. I would just know if we made a case, we would have that information documented somewhere.

Q. You have been in law enforcement since 1968; is that correct?

A. Yes.

Q. And just so I'm clear, it was your testimony that underage sales of alcohol and tobacco have always been a priority since you've been a police officer; is that correct?

A. Alcohol has always been a priority, for the whole 29 years. Underage sales of tobacco products to minors, you might say in the first ten years that I was with the organization, I would not have classified it as a priority, okay.

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Q. So the first ten years would be, roughly, 1968 to 1978?

A. Yes.

Q. And when you say you would not classify it as a priority, why is that?

A. Because of probably the frequency with which it would be worked as compared to other things that were worked during -- by me during that period of time.

Q. So if you were to prioritize them, you would put underage sales of alcohol to minors where?

A. Above tobacco.

Q. Would it also be above drugs?

A. Not during that period of time. Did you say would it not be above drugs? It would be above drugs during this period of time.

Q. This underage sale of alcohol to minors?

A. And tobacco during that first ten years. The first ten years I was in law enforcement in Jacksonville, moonshine whiskey was --

Q. This is before me.

A. Okay. Very good. North Florida was an

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area that had a large illegal whiskey problem, you might say. And that would have been number one in the early years. It would have been the sale of moonshine whiskey or the sale of alcoholic beverages without a license. That's just the reality of the agency in that area. But if you were going to say -- going to prioritize things, it would have been the sale of alcoholic beverages to minors, moonshine whiskey, sale to minors of tobacco products, nuisance complaints, and drugs were way down. You know, you didn't -- drugs weren't in bars then. Nobody knew about drugs in bars.)

Q. If we progress to 1978, how would the priorities have changed?

A. It would have changed in that drugs would have become more prominent. That's about it. Drugs would probably replace moonshine all together going into the '80s. Sale of alcoholic beverages without a license would have declined considerly. Emphasis outside of licensed premises would have declined, and the general thrust of the agency would have been toward retail establishments, whether or not they were doing the things they should have been doing, not selling to

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kids, anything to kids, and not allowing drugs to be sold or used on the premises, things like that. But any question you ask me, I have to put it in a historical perspective.

Q. That's fine. Continuing on, then, you started your analysis through to the '80s. Would the priorities have changed through the '80s to today?

A. Not so much the priorities, but the -- the ability to be successful, let's put it that way. In the early '90s we got permission to do the tests with underage persons. Any figures that you might find prior to that on underage sales of anything would be considerably less than they are today because of -- let's put it this way: Before the early '90s you might have spent six hours trying to find one person being sold an alcoholic beverage or tobacco product, where the same determination could be accomplished today in ten minutes using an underage person to go in and proactively try to buy.

So it's just simple economics of time. You would -- the results would be different. You know, you would spend years of time trying to determine things you can now determine in very

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short periods of time.

Q. Do you know who Richard Boyd is?

A. Yes, I do.

Q. And who is he?

A. He is the director for the Division of Alcoholic Beverages and Tobacco for the State of Florida.

(Defendant's Composite Exhibit 1 was marked for identification.)

Q. I'm going to show you an exhibit from the deposition of Richard Boyd.

A. Okay. What part?

Q. Did you attend this tobacco prevention seminar June 4 through 6, 1995?

A. I'm not sure. I don't recall.

Q. If you would read on page 116 beginning "Enforcement of youth access." Just that paragraph, please.

A. Right here?

Q. Yes.

MR. LECLAIR: You want him to read it to himself or --

MS. FURNESS: Please.

THE WITNESS: Okay.

BY MS. FURNESS:

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Q. And just so the record is clear, the first sentence reads, "Before the passage of the PACTP Act, enforcement of Florida State law prohibiting the sale of cigarettes to persons under 18 years of age was nonexistent."

Would you agree with that statement?

A. No, I wouldn't.

Q. Why is it you wouldn't agree with that statement?

A. Because I conducted cigarette investigations and supervised the cigarette investigations as a sergeant in the Jacksonville office.

Q. And what is the date of that?

A. Are you talking about something in '95?

Q. The presentation was made in 1995, yes.

A. No. I mean, he was saying before passage of PACTP, whatever. What are those years? See, he might be talking about something in 1922. I don't know.

Q. The act was passed in 1992.

A. Okay.

Q. And --

A. My personal experience is, there was enforcement, based on personal experience.

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Q. And you would describe the enforcement as being more than nonexistent; is that correct?

A. Yes.

Q. And could you qualify that anymore specifically for me?

A. I'm just saying I have personal knowledge of supervising cigarette enforcement cases.

Q. And over all of the investigations that you supervised, would you say this was 10 percent, 20 percent? How much?

A. I wouldn't want to characterize a percentage. It wasn't a majority. It would have been a minority percentage of time.

Q. What other investigations would have been conducted that may have been in the majority?

A. Before 1995?

Q. Yes.

A. I mean, before 1992. Sales of alcoholic beverages to underage persons, drug investigations. We're talking about investigations that were conducted by our organization. You might even have found some sale of alcoholic beverages without a license in

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numbers greater than the sale to underage tobacco situations.

Q. I don't mean to belabor the point, but just so the record is clear, with respect to the enforcement of laws regarding tobacco products, we've mentioned vending machines and we've mentioned sales to minors. Are there any other offenses to which your office is charged?

A. My office is charged with any violation of the Florida laws concerning taxes and prohibitions on tobacco products. I can't sit here and enumerate all of them. They're the whole section of the Florida Statute 210 dealing with tobacco product violations.

Q. I know I've asked you this before, but we'll try it one more time. If you don't know, that's fine. Would you be able to tell me, in any terms you wish, how much of your division's enforcement activity is related to tobacco offenses?

MR. LECLAIR: Objection. Asked and answered. You.

Can repeat your answer if you --

THE WITNESS: I wouldn't know what

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percentage of my whole division would be in that area.

BY MS. FURNESS:

Q. Have you ever heard of the "We Card Kit"?

A. Yes, I have.

Q. Are you familiar with the program?

A. No. I just saw -- somebody showed me a kit one day. The front of it said, "We Card Kit" on it.

Q. When did you first see the kit?

A. It might have been last year. I don't know.

Q. Do you know who supplied the kits?

A. No.

Q. Would you know how many districts received the kits?

A. No, I wouldn't.

Q. Did you ever look at the kit?

A. I recall having right in front of me the sign saying "We Card Kit," but I can't recall anything else about.

Q. Have you talked to anyone who have used the kits?

A. No.

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Q. Do you know if it has been used by the district?

A. By the district? My understanding of the "We Card Kit," it wasn't something for my officers to use.

Q. Have they ever distributed the kits?

A. I have no knowledge of them distributing them.

Q. With respect to retail licenses for the sale of tobacco, do you know how long there has been a requirement that retailers have a license?

A. No. But I know it's fairly recent.

Q. Do you investigate any violations regarding tobacco licenses?

A. Yes, we do.

Q. How do you conduct your investigations?

A. Depending on what the allegations are that are being complained about.

Q. Do you get tips?

A. Yes.

Q. Do you investigate every tip?

A. Yes, we do.

Q. Could you give me some examples of the types of tips you would receive?

A. We get complaints on the telephone that

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people are selling cigarettes without a permit. We assign someone to go out and determine if that's so.

Q. Any other types of investigations?

A. Let me see. That's the one that comes to mind, not having the permit.

Q. Would you know whether the retail license for alcohol or for the tobacco permit has received more violations when you're conducting your underage investigations?

A. In sheer numbers?

Q. Yes.

A. I would estimate that the alcohol has more -- alcohol side of it has more violations than the tobacco side.

Q. And why would that be?

A. Because of sheer numbers. Checking 20 percent of the number of alcoholic beverage licenses that we have versus 20 percent of the number of cigarette permits, tobacco permit places we have would be a much greater number. And logically it would result in a larger number of violations.

Q. Are there any other ways to enforce the sales to minors beyond the buy by minors program?

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MR. LECLAIR: Object to relevance, materiality, and calls for speculation on the part of the witness.

You can answer it if you're able.

THE WITNESS: Yes.

BY MS. FURNESS:

Q. What are they?

A. The way we used to do it before we got the ability to use the minors, we conducted surveillances.

Q. Over and above surveillance and the buy by minors are there any other methods?

A. Those are basically the techniques you use for package sale, to-go sale, where consumption on the premises is allowed, special agents go inside, work undercover with the patrons and observe young-looking people purchasing and consuming and in possession of alcoholic beverages, and they can make cases.

Q. Are you aware of any alcohol license that's been revoked?

MR. LECLAIR: Object to relevance.

THE WITNESS: I can answer?

MR. LECLAIR: Go ahead and answer.

THE WITNESS: Yes.

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BY MS. FURNESS:

Q. Would you be able to tell me the total number?

A. No, I wouldn't.

Q. And why is that?

A. Because I don't know the total number.

Q. Would you be able to give me the total number for 1997?

A. For where?

Q. Within your jurisdiction.

A. No, I wouldn't.

Q. Would you know the total number of tobacco permits that have been revoked?

A. No, I wouldn't.

Q. Has there ever been a tobacco permit revoked?

A. Yes.

Q. Would you know in the year 1997 how many tobacco permits were revoked?

A. No, I wouldn't.

Q. As district supervisor, do you prepare any strategic plans for your own office?

A. No.

Q. Do you prepare any summary reports of the achievements for the year?

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A. No.

Q. Do you know if you've met the expectations set forth under the strategic plan for the 20 percent inspection of all vendors?

A. At the end of the year, Russ Smith will generate a report that will document the -- all of the -- what do you call it -- status of that for the agency. He used to do a quarterly report, but it has turned into to a compilation. It doesn't give specifics for a quarter anymore. It's a compilation where you are toward the 20 percent.

Q. What is the name of that report?

A. I have no idea. Just telling what the latest statistics are.

Q. And did you say it comes out annually?

A. The one annually is how you determine whether you met the criteria or met the strategic goal. Quarterly, he gives you something. It might be a progress report, whatever. But he has a way -- I don't know that it's for us. It may not be for us, but I get to see it. And it's just Russ Smith saying, here's how you look so far, or whatever.

Q. Well, could you describe for me the physical layout? Is it in columns, tables

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matrices?

A. In the left-hand column, it's all the districts. It would have his idea of how many licenses you have in your district in a column. And it would have numbers of attempts versus numbers of buys, basically that kind of thing. And a percentage figure at that point.

Q. Percentage of what?

A. Percentage of the number of attempts you made versus the number of buys you made. And I'm thinking that the last one I saw didn't even have that. It just showed from the beginning of the year through now what -- how many you've checked and how many buys have been made for alcohol and tobacco.

Q. And how long has Russ Smith been generating this report?

A. Maybe two years at the most. I don't know if three years ago he was doing it. But at least two years.

Q. And is it correct that you use this report to verify your compliance with the 20 percent rule?

A. Yes. And there are disagreements with numbers, with all of it. We, you know, we might

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disagree with the number of licenses he says we have or we may disagree with the number of attempts we -- his records show that we made or the number of buys we made. But, you know -- his records are, like I said, his records come from a global extraction. Ours are local.

Q. And what happens if you disagree with his numbers?

A. Nothing.

Q. Do you bring it to Russ Smith's attention and nothing happens, or do you do nothing?

A. We might bring it to Russ Smith's attention and nothing happens. And we bring it to maybe somebody's attention in Tallahassee and nothing happens there either.

Q. Now, based on this report, have you been able to confirm that you've been in compliance?

A. For the most part.

Q. And could you describe to me what "For the most part means"?

A. It would mean that generally we would agree with what he will have there. There are some instances where his report has smaller numbers than our report, but it may be because

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somebody in my office didn't input the information timely. It may -- he may have made his extraction of records or whatever, numbers, before all of my people's information was in the computer.

MS. FURNESS: Steven, again, I don't know if we have these. Would it be possible for me to get copies of these?

MR. LECLAIR: Again, I can't speak for lead counsel. I'm sort of just sitting in. I don't have any reason to think they wouldn't make it available.

MS. FURNESS: Thank you.

BY MS. FURNESS:

Q. Captain, would you keep back copies of these reports?

A. No.

Q. Would you have the most recent report issued?

A. I don't know. I just use them to argue with, and then they're -- they don't mean anything, okay.

Q. What was the date of the most recent report?

A. I don't -- I don't know that it had a date on it. It would have been for the time

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period through March 30th. That would be the -- it would be for three quarters of the year. Our year ends July the 1st. So it would have been for whatever the three quarters before that.

Q. And you said you see all the districts on this report; is that correct?

A. Yeah.

Q. Do you know how Broward fairs comparatively as to the other districts?

A. Fairs as to what?

Q. Are you more often in compliance than other districts, or are the other districts in compliance more often than Broward?

A. I would say most of the offices are in compliance.

Q. Would that mean that all of the districts are equally in compliance?

A. It would mean that most of the districts are complying.

Q. What happens if a district fails to comply?

A. I have no idea. I've never been there.

Q. Are you aware of any other strategies that may be employed to reduce minor access to tobacco, for example, raising the age from 18 to

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21?

MR. LECLAIR: Again, object. Calls for speculation on the part of the witness.

THE WITNESS: Personally, I'm not familiar with strategies. By whom, I don't even know.

BY MS. FURNESS:

Q. Do you think that if the legal age was raised from 18 to 21 for purchases of tobacco that that would be effective?

MR. LECLAIR: Again, calls for speculation on the part of the witness. We object.

Feel free to answer if you're able.

THE WITNESS: I wouldn't know. I've been around a long time. And I heard that argument with the drinking age going from 18 to 21. And I don't know that it's made a difference.

BY MS. FURNESS:

Q. Do you have any opinion on a complete prohibition on tobacco sales?

MR. LECLAIR: Objection. Relevance to his opinion.

THE WITNESS: I have no preference or

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opinion.

BY MS. FURNESS:

Q. Do you know what the Alcohol, Beverage, and Tobacco Trust Fund is?

A. I'm not sure if it's the same thing. I think my agency is funded by a trust fund. I'm not sure if that's the same thing you're talking about.

Q. Okay. Is your agency 100 percent funded by a trust fund?

A. I don't know. My understanding is, we are funded by a general revenue fund of the State of Florida. The Legislature grants us a budget. But I don't know whether this is new or something that will happen, but recently I'm hearing that there is some kind of trust fund that we'll be funded from. I don't know whether it's in effect already or just proposed or whether -- you know, whether it's just a rumor. But it's -- to my understanding, it would be a funding source for our division.

Q. What is your current operating budget?

A. I have no idea.

Q. Who would know that?

A. My best estimate would be Alan Herring,

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and he serves as some kind of budget officer in Tallahassee.

Q. Do you know what the current excise tax is on cigarettes?

A. I don't recall. There was a time I lived and thought about that when I was an agent, but I don't recall now.

Q. Do you know if the excise tax is earmarked, for example, for education or for any intervention programs?

A. No, I wouldn't know personally.

Q. Are there any restrictions regarding sales from vending machines for minors?

A. Yes. It's the same restriction as it would be as if you're buying from a person.

Q. Have you ever heard of an electronic locking device for a vending machine?

A. I've heard of locking devices. I don't know whether they're electronic or not.

Q. Can you describe them for me?

A. I can't. I've only heard of some devices that persons can lock vending machines, and the potential purchaser would have to go to the management or employee to gain access to the cigarettes inside the machine. But you can do

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that in the old days with an old Yale lock, okay.

Q. Do you know when Florida required retailers to have licenses to sell tobacco products?

A. I'm thinking sometime in the early '90s. I can't be certain.

Q. And prior to requiring a licenses, were there any restrictions on the sale of cigarettes?

A. Only that you sell to persons 18 and older.

Q. Do you know if there has ever been any prosecutions for the sale of tobacco products to minors?

A. Prosecutions? You mean administratively, criminally, or --

Q. Criminal.

A. No. I know we have filed. But I don't know whether a prosecution ever took place.

Q. And when you say, "we have filed," what does that mean?

A. That means we take the information of that arrest, a misdemeanor citation, to the State Attorney's office and file a case.

Q. Is the same misdemeanor applicable for cigarettes to minors as it is for the sale of

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alcohol to minors?

A. I missed something there.

Q. I'm sorry. What degree or how do you qualify the misdemeanor for sales of tobacco to minors? Is it a first degree?

A. I don't know the degree of it, but it's considered a noncriminal violation.

Q. And is the sale of alcohol to minors also a noncriminal violation?

A. It's a criminal violation.

Q. Do you know how many prosecutions there have been for the sale of alcohol to minors?

A. There have been many. I don't know the numbers.

Q. Would you say it would be more than the sale of tobacco products?

A. Definitely, yes.

(A recess was taken.)

(Defendant's Exhibit 2 was marked for identification.)

BY MS. FURNESS:

Q. I'd like to show you what's been marked as Exhibit 2.

Q. Have you ever seen a form like that before?

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A. No, I haven't. But it doesn't mean that somebody couldn't have just asked for these figures and then put it in a form, you know, that they want it to be in, but personally I don't recognize this form at all.

Q. Have you ever received any memorandum from Richard Boyd specifically requesting information on tobacco access statistics?

A. It would be from Tallahassee how it would come to us, and I wouldn't know who it was from specifically. But we do get inquiries like that. Somebody is then assigned to get that information and get it to them. Whether it was Richard Boyd or whoever, I don't know. I don't recall anything specifically coming from Richard Boyd.

Q. Would the inquiry come to you or someone else in your office?

A. If I'm there, it would come to me, and I would assign it to someone to do. Now, July of 1994, I'm trying to recall -- I'm thinking that Richard Boyd was my chief of South Florida. But I don't see -- I don't recall ever seeing this form in this form format, and I'm almost certain they would have asked for information like that, but

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not necessarily like that. You would notice that there's no place for the complying district to sign or saying they've done what needs to be done.

Q. So you've never completed a form like this?

A. No, not that I can recall. I would think they would just ask for that information, and they plug it in back in Tallahassee.

Q. Has anyone ever called you and asked you for specific information, for example, on cigarette inspections?

A. I'm sure they have. I wouldn't know who, what, when, where. I write down the information to someone in the office and say, would you get this information for whoever requested it.

Q. Who would you routinely select to assist you in getting that information?

A. Either a sergeant or a clerical employee who had some computer skills.

Q. So there's not one person designated to assist you in collecting statistics?

A. No, no. It's the kinds of -- these kinds of information can be gleaned from our

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computer by anybody who would know how to get them, ask the right question of the computer to get them.

Q. Do you know who Paula Noor is, N O O R?

A. No, I don't.

(Defendant's Exhibit 3 was marked for identification.)

Q. Earlier we were talking about reports generated by Russ Smith. And let me show you what's been marked as Exhibit 3 and see if that's an exemplar.

A. This is the format that I was trying to describe before with the district on the left-hand side and the numbers. The only thing -- let me see. Okay. Yeah. That's it. It has -- let me see. One, two -- that's for a whole year, it looks like there.

(Defendant's Exhibits 4 through 8 were marked for identification.)

BY MS. FURNESS:

Q. What I've now shown you are exhibits marked 3, 4, 5, 6, 7, 8. Can you tell me what these are?

A. Okay. These appear to be the kind of reports generated in my knowledge by Russ Smith,

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our computer person for the Division, okay. On the left it shows the different various district offices. This is supposed to be a representation of the number of licenses in our district, okay. This is tested -- the next column shows the number of premises tested of those numbers listed to the left of it. And then the third column is a percentage of those numbers. The fourth column under "purchases" is the number of actual purchases of those premises tested. And the next column is a percentage of that figure of those tests.

Q. Now, how would the number tested be calculated? Is that information that your office would give to Russ Miller?

A. Russ Smith.

Q. Smith, excuse me.

A. Okay. That's information that depending on how early it is, let's say, 1994, I'm not sure whether Russ Smith was taking it off the machines then, taking it off the global perspective or whether the information was being supplied by the offices. I have a feeling he was taking it off the machines, okay, off the computers, the total compilations. That's my guess.

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Q. Have you ever given Russ Smith specific numbers on the retailers tested?

A. I have given people in Tallahassee numbers on -- number of retailers tested and then later seen it in a format like this.

Q. And did the numbers match?

A. Sometimes they do, sometimes they don't. Usually if they are numbers we gave them, we see those numbers again on things like this. The numbers that differ are numbers that Russ Smith takes off the global perspective versus the ones that we put in our machines locally.

Q. Turning to the "purchases" column, why would it be that the number tested and the number of purchases are different? Is it that some purchases were not made because the identification was actually verified?

A. No. This tested means a number of locations they sent a kid in to ask -- you know, to buy. If the license premises didn't sell to that kid, then they wouldn't appear in the "purchase" category. They only appear in the "purchase" category if the licensed premises sold to an underage person.

Q. So for each purchase, would there be a

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corresponding arrest?

A. Yes. Right.

Q. Let's look at your specific district, if we could. So from the period January 1, 1994, to December 31, 1994, there were 29 purchases made; is that correct?

A. That's what this document is saying. Okay. All right.

Q. Would you know if the number is higher or lower?

A. I wouldn't know. I wouldn't even say that this is accurate. I would say this is what this document here is saying, okay.

Q. Why is that?

A. Because I wouldn't know -- I -- I would have to check somewhere else to verify that.

Q. Does it appear to be correct, or does it appear to be too high or too low?

A. I wouldn't know. I would say the percentages -- I think back then it was 15 percent. That would be the range. I don't know what that is at all. I don't understand that one, 7 percent as the number tested. That's -- that doesn't appear to be in line with my office, percentages of tobacco premises tested.

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Q. And would that mean that your percentages tested are higher than what's actually shown here?

A. I would think my percents would be higher. I'm not arguing with it, but I'm just saying my recollection is that our percentages for tobacco test is higher than that.

Q. And what does this mean here, compliance percent rate?

A. This is -- this means that of all the licenses that -- license premises that we have in Fort Lauderdale, Broward County, 81 percent of the licensees are doing what they should and not selling to the kids. That's what that figure represents.

Q. This exhibit deals exclusively with sales of tobacco products to minors; is that correct?

A. That's correct. Now that would be for the whole state there, but every district would be trying to accomplish a very high rate of compliance. That's for the whole state evidently. But I would only be concerned about Broward County.

Q. Looking at Exhibit 3, how would you see

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your rate of compliance?

A. That's why that doesn't make any sense there. My rate of compliance has consistently been higher than the state average, okay. And I don't understand that. That's the part I don't understand.

Q. Have you ever seen the compliance rate noted on the bottom of Exhibit 3 to be higher than 81 percent?

A. I don't recall the numbers, I really don't.

Q. So when you received this report, where is your attention directed?

A. I immediately go to my district and look at my numbers and see whether they're in compliance with the strategic goals.

Q. Do your strategic goals have a specific percentage that you take this and compare it to?

A. The strategic goals would be whatever percentage I'm supposed to have checked during that period of time. It should match what's on here. Think of it this way: Let's say we did our figures, numbers, and we had tested 15 percent of our licenses, and I send that information up, that raw information, to Tallahassee, and then I see a

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report like this that says I'm only doing 7 percent, I would -- yes, I would be very upset, okay. And things like that have happened.

Q. And what remedial efforts are taken to raise the percentage?

A. I would -- no, no, no. I would bring it to the attention of the person who I gave my figures to that that figure would be wrong, okay. And I can base mine on actual records locally in the office, gleaned immediately from the computers. And that would be my argument.

I can tell you not only how many we did, but I can say what places we went to. Everything is documented. I mean, it's no secret. I mean, every time a place is tested, we have a record of it, and can prove to anybody who would want to see. And if the figure that appears here is too low, then we can prove we did more.

Q. What should this figure be?

A. Oh, I don't know what that figure should be. It depends on what year, what the goals were for that year. I wouldn't know. I don't remember. It could have been 15 percent was the target. I don't think 20 percent came in until maybe '96. Before then I think it was 15 percent

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or something like that.

Q. Do you know what this year's target is?

A. This year's target is 20 percent. One year it was 25 percent, for tobacco I'm thinking.

Q. Let's look at the next exhibit. And that appears to be different than Exhibit 3, the column headings are different. Could you explain this one to me, please?

A. This one supposedly represents our report on number of administrative cases made by all the district offices, the number of inspections made by all of the offices, and that percentage of inspections made by all of the offices, and the number of arrests made by -- for tobacco violations by all of the offices. You see?

Q. If we were to look -- just so the record is clear, if we were to look under the number of purchases for Fort Lauderdale district, the entry is 29?

A. Uh-huh.

Q. And if we look on the corresponding column for arrests in Fort Lauderdale, the entry is 39?

A. That's right.

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Q. Do you know why there is a disparity?

A. I don't know. But it proves my point that the figures -- something's wrong with some of the figures. For every purchase there should be an arrest, corresponding arrest. And that's why I argue with some of those little figures over there, because right here it's 39 arrests. Those arrests had to come from a purchase, a buy.

Q. What is the difference between number of inspections and number tested?

A. Let me see if I can look at the number and tell by -- this looks like it's a number of premises that have license or that our agents went to and did an inspection form. You report on -- we call it product compliance or something like that where they fill out the day, time, who they talk to, the whole nine yards and whether or not they found any violations. That's inspections. Agents, inspectors everybody who does inspections, okay.

Q. So that's different than --

A. Actual testing, yes, definitely.

Q. And if we look here on the first column on Exhibit 4, there are two administrative cases, and yet you've been to 172 premises for testing?

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A. Right.

Q. Could you tell me how they're related?

A. Number of administrative cases having to do with number of cases means have sold to your agents, underage persons, three times. Anybody sells three times, we make an administrative case. Some sell once, and then we address and do our compliance thing, and they straighten up and never sell to an underage kid again; some don't. These represent the ones that don't, that three times, and a case is made. It has nothing to do with an arrest. Three arrests can be made and only one administrative case made or two arrests and no administrative cases.

Q. Therefore, in 1994, two administrative cases were brought?

A. That's what this document says.

Q. Does that seem low or high to you?

A. I can't say. It seems low, but I'm not going to argue with it. But I'm not going to say it's for sure either.

Q. What would the average number of administrative cases in a year be for tobacco enforcement?

A. I can't say.

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Q. Would it be over 25?

A. I don't know. I can't say. I can't recall if this is focuses in on that number or anything.

Q. If someone said to you there were 100 administrative cases brought in a year, would that seem unusual?

A. I would say that is high,.

Q. If someone said there were 20 administrative cases brought in a year, would that seem high also?

A. I really don't know. I can't say.

MR. LECLAIR: Just so we're clear on the framework of the question, are you talking about within his district or statewide?

MS. FURNESS: His district.

BY MS. FURNESS:

Q. On Defendant's Exhibit 5, can you explain to me the difference between that and Defendant's Exhibit 3? It appears as though this Exhibit 5 is a quarterly versus an annual; is that correct?

A. That is correct. This is for July through September, the quarterly one. And the other is a January through December, yearly. But

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our years don't run that way. That's another thing. I may never have seen this. Our figures are figured from June 30th through July -- well, June 30th -- well, July the 1st through June 30th, and that's how we think and count and everything else. Okay?

Q. Okay.

A. Not from January through December like that is right there. This represents a quarterly list of statistics quarterly.

Q. When you receive the quarterly report, after looking at your district, what do you do with that information?

A. If it's wrong, I immediately protest, okay. This is how I do it: If it's lower than what it should be, I call my sergeant saying, verify the numbers. My sergeant would go verify the numbers and come back and say, these aren't our numbers. These numbers are low. We are higher than this. And I say, okay, give me documentation, prove it to me, show me how, and they would show me how, prove it to me. And then I would probably call Russ Smith or call the -- whoever my chief might be then and say, these figures are wrong, okay, because ta-da, ta-da,

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ta-da. That's how I would do it.

Q. Have you ever seen a revised quarterly report with the corrected figures for your district?

A. I don't think I have. I don't think so.

Q. Comparing Exhibit 5 to Exhibit 6, can you explain how these two are different or how they are related?

A. One lists only percentages of inspections and arrests. And the other lists number of licensed premises, number of licensed premises tested, the percentage of that number tested, the number of purchases, and the percentage of the number tested and administrative cases.

Q. When you receive these reports, do you use them in conjunction with each other?

A. I don't think I had ever seen anything like this.

Q. Indicating Exhibit 6, correct?

A. Right. This looks more like the others that I have seen. But I don't -- I can't recall ever seeing anything like this.

Q. Do you receive similar reports as this

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for alcohol enforcement?

A. Yes. Let's say I have received separate reports.

Q. Can you tell me, if you know, is there any difference between the quarterly enforcement tobacco reports and the underage person access to tobacco reports?

A. Appears to be differences in numbers. Oh, wait a minute. Categories are different. One has a hits category, okay. Those appear to be the main differences.

Q. Do you know what a hits category is?

A. No, I don't. Anything I told you would be a guess.

Q. Have you ever seen this report marked as Defendant's Exhibit 7?

A. I can't say that I have. If I did, I would have just thought that hits meant buys.

Q. And have you ever seen Defendant's Exhibit 8?

A. I can't recall seeing anything like that, to my knowledge. Like I said, the only kinds of things like these that I've seen are the ones that have the number of licenses and the numbers tested and the percentages and -- like

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this. Maybe not even with the administrative cases on it, but they could have. I really don't know. But these little short ones, I don't recall these at all.

MS. FURNESS: I have no further questions.

MR. LECLAIR: I have no questions.

(A recess was taken.)

BY MS. FURNESS:

Q. Captain, when we were on our break checking spellings, you had also made a comment you knew Mr. Boyd in another way; is that correct?

A. Yes.

Q. How is that?

A. We worked together. I was an agent in the Jacksonville office when he first became a beverage agent and came to work in Jacksonville.

Q. I think you noted that you taught him?

A. I helped teach him. I helped -- what do you call -- train him. It's a group thing. Everybody contributes to the new person learning something.

Q. And could you describe in some detail the type of courses that you may have taught him?

A. It wouldn't be courses. It would be

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different investigative techniques, things to look for, things to look for in certain situations, that kind of thing.

Q. And how long would you have been his teacher?

A. It would be --

MR. LECLAIR: I just want --

THE WITNESS: -- situational.

MR. LECLAIR: Let me object to the use of the term "teacher." I don't think it's quite accurate.

You can go ahead and answer it.

THE WITNESS: It would be situational. An older agent helping a newer agent, that sort of thing. It wouldn't be former teacher-student student that sort of thing. Any time a more experienced agent is in the company of a newer agent, anything he can show the newer agent how to do is helpful. We call that training.

BY MS. FURNESS:

Q. And how long was he then in your company as a new agent?

A. It would be off and on. I think he left the Jacksonville office in about 1977,

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thereabouts. But we would have worked together on different occasions from the time he became an agent to that year.

Q. Did your work involve any type of enforcement on sales to minors of tobacco products?

A. I couldn't recall whether he would have been specifically with me on situations involving tobacco products.

Q. Do you recall if you gave him any specific advice on sales to minors of tobacco products?

A. No, I don't.

Q. You have the right to read this deposition or waive.

A. I would like to read it.

(Whereupon, the deposition concluded at 12:50 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, ALLEN F. NASH, hereby certify that I have read the foregoing transcript of my deposition and that the statements contained therein, together with any additions or corrections made on the attached Errata Sheet, are true and correct.

Dated this day of 1997.

_____
ALLEN F. NASH

The foregoing certificate was subscribed to before me this _____ day of _____, 1997, by the witness who has produced a _____ as identification and who did not take an additional oath.

_____
Notary Public
My commission expires:

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, the undersigned authority, certify that ALLEN F. NASH personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 20th day of June, 1997.

DARLINE MARIE WEST
Notary Public, State of Florida
My Commission Expires 10-26-97
Commission No. CC 319663

DARLINE MARIE WEST
Notary Public

REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, DARLINE MARIE WEST, RPR, certify that I was authorized to and did stenographically report the foregoing deposition/proceedings; and that the transcript is a true record thereof.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 20th day of June, 1997.

DARLINE MARIE WEST, RPR

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